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Supreme Court of the United States

OCTOBER TERM, 1943.

No. 441

GENERAL TRADING COMPANY, a corporation doing business as MINNEAPOLIS IRON STORE,

Petitioner,

vs.

STATE TAX COMMISSION OF THE STATE OF IOWA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA.

and

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

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MAY IT PLEASE THE COURT:

The petition of General Trading Company, doing business as Minneapolis Iron Store, petitioner above named, respectfully shows:

A.

A SUMMARY AND SHORT STATEMENT OF MATTER INVOLVED.

The question presented is the validity of the use tax law of Iowa as applied to the particular sales here. The Iowa

use tax law imposes a tax on the use of personal property purchased for the use in Iowa, and provides that such tax shall be collected when sold by a "retailer maintaining a place of business in this State," and makes *the retailer personally liable therefor.*

This is the same tax law that was involved in *Nelson vs. Sears, Roebuck & Company,* 312 U. S. 359, and *Nelson vs. Montgomery Ward & Company,* 312 U. S. 373.[1] The law itself is to be found in Sections 6943.102-6943.125 of the Iowa Code of 1939. It is reproduced in the appendix to this brief, pages 22-26.

By the decision below, the Supreme Court of Iowa held that petitioner was a "retailer maintaining a place of business in this State" within the statutory definition contained in the use tax law.[2] That question is, of course, not open here, since that is purely a State question.

Petitioner is a Minnesota corporation, with principal place of business at Minneapolis, Minnesota. It is not admitted to do business in Iowa, and it has no office, agent, or place

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[1] In *Nelson vs. Sears, Roebuck & Company,* 312 U. S. 359, (361), this Court summarized the terms of this law as follows:

"The Iowa Use Tax is complementary to the Iowa Retail Sales Tax. Ia. Code 1939, § 6943.074, et seq. It is a tax on the use in Iowa of tangible personal property at the rate of two per cent of the purchase price. 'Use;' so far as material here, is defined as 'the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.' § 6943.102. While the tax is imposed on 'every person using such property within this state until such tax has been paid' (§ 6943.103), it is further provided (§ 6943.109) that every 'retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state . . . shall at the time of making such sales, whether within or without the state, collect the tax imposed by this act from the purchaser . . .' By § 6943.112 the tax constitutes a 'debt owed by the retailer' to the state. And if the retailer fails to collect the tax, etc., his retailer's permit (§ 6943.084) may be revoked; and in case of a foreign corporation, its permit to do business in the state as well. § 6943.122."

[2] For this statutory definition see paragraph 6, of Section 1, of the Law. Appendix, page 23 (R. 27, foot note).

of business and does no business in that State.[3] Its business is largely dealing in wholesale iron and steel and automobile accessories, which it sells, among others, to retailers in Iowa. Such sales and the properties covered are concededly not within the Iowa use tax. It occasionally sold its products to persons living in Iowa who were not retailers, but bought them for their own use, and the Iowa Supreme Court held petitioner liable for the use tax upon the products so sold. No question is raised as to the amount of the tax, if petitioner is liable for any of it.

Petitioner sent its traveling solicitors or drummers into Iowa. None of them either lived in Iowa or had quarters there. There they obtained the tentative orders which they were without authority to accept, and did not accept. These orders were transmitted to the head office in Minneapolis, and if the customer's credit was acceptable, and he was otherwise a desirable customer, the tentative order was accepted at Minneapolis, and the goods shipped either by railway, bus, or parcel post, at the expense of the customer, to the customer's place of business or residence in Iowa (R. 7-10).

The Iowa Tax Commission assessed petitioner for this use tax, which it refused to pay, and brought suit in Iowa to collect the tax (R. 1-6). For the purpose of determining an important Federal question petitioner appeared voluntarily and set up in detail exactly how these sales were made

[3] As previously stated, the Iowa Supreme Court held that because petitioner had sent drummers into Iowa to solicit sales, it was a retailer under the definition contained in the statute, but the conclusion was reached because it had an "agent operating within this State under authority of the retailer," and one who was located in Iowa "temporarily." However, statutory definitions do not control constitutional questions, and it will not, we believe, be claimed that petitioner was doing business in Iowa in any real sense under the decisions of this Court, apart from the statutory definition. The Iowa Supreme Court so held (R. 27).

(R. 7-11). The Tax Commission demurred to petitioner's answer (R. 11), and the District Court sustained the demurrer (R. 12-16). Petitioner refused to plead further and judgment was entered against it for the amount of the tax (R. 17-18). Petitioner appealed to the Supreme Court of Iowa (R. 18), where the judgment was affirmed by the full Bench (R. 24-35).

In its answer, to which the demurrer was sustained, petitioner specifically set up and claimed:

(1) That the sales were made wholly outside of the State of Iowa and the property delivered to the customer outside such State, and, hence, the imposition of such tax constituted a violation of the due process clause of the Fourteenth Amendment (R. 8-10).

(2) That the transaction was one wholly in interstate commerce, and, hence, the State of Iowa had no right or jurisdiction to impose a tax thereon, and that the imposition of such tax violated the commerce clause (R. 8-10).

These contentions were renewed in the Iowa Supreme Court (R. 21-23), where they were rejected.

B.

STATEMENT DISCLOSING THE BASIS OF THIS COURT'S JURISDICTION TO REVIEW THE JUDGMENT.

The judgment sought to be reviewed was entered by the Supreme Court of Iowa, which is the highest Court of that State in which a decision in this suit could be had, and such judgment is the final judgment in such suit. In said suit, there was brought in question the validity of the use tax law

of Iowa on the ground of its being repugnant to Article I, Section 8, Clause 3 (the Commerce Clause) of the Constitution of the United States, and to the due process clause of the Fourteenth Article of Amendment to said Constitution. There was specially set up and claimed by petitioner an immunity under said provisions of the Constitution, and the decision of the Supreme Court of Iowa was in favor of the validity of said statute and against the immunity so specially set up and claimed. This Court, therefore, has jurisdiction to review said judgment under Section 237, as amended, of the Judicial Code (18 U. S. Code, 344b).

C.

QUESTIONS PRESENTED:

(1) Whether the imposition by the State of Iowa of a tax for the use of the property here involved *violates the due process clause of the Fourteenth Article of Amendment to the Constitution of the United States*, since petitioner performed no act taxable within the State of Iowa, and had no property taxable therein, and all orders were accepted and the property actually delivered outside the State of Iowa.

(2) Whether the imposition by the State of Iowa of a tax upon petitioner for the use of the property here involved *violates the commerce clause of the Constitution of the United States (Article I, Section 8, Clause 3)*, when petitioner's sole activity was to send solicitors into the State of Iowa and thereafter make the shipment into Iowa from outside the State, and the orders were accepted and the property actually delivered in Minnesota.

D.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

(1) Because the decision below by the Supreme Court of Iowa is in direct conflict with the decision of the Supreme Court of Michigan in *Simpson vs. Gundry*, 297 Mich. 403, 298 N. W. 81, certiorari denied, *sub. nom. Brown vs. Simpson*, 314 U. S. 674. The Michigan Supreme Court held its use tax invalid under the Federal Constitution as applied to the identical state of facts under which Iowa sustained its tax. The decision below is probably in conflict with the decision by the Supreme Court of Arkansas in *McLeod vs. J. E. Dilliworth Company*, 171 S. W. (2d) 62 (not yet reported in the Official Arkansas Reports).

(2) Because there are a large number of States in addition to Iowa and Michigan which have similar use tax laws, and it is essential that it be authoritatively determined whether, under the circumstances here involved, a State can levy such a tax. The next State Court which decides the question may conclude to follow the Michigan Supreme Court or it may conclude to follow the Iowa Supreme Court.

(3) Because the Supreme Court of Iowa has decided a Federal question of substance not heretofore specifically determined by this Court, and has decided it in a way probably not in accord with the applicable decisions of this Court.

WHEREFORE, Petitioner prays that a writ of certiorari be issued by this Court, directed to the Supreme Court of the State of Iowa, commanding that Court to certify to this Court for its review a transcript of the record in case num-

bered and entitled on its docket 46273, State Tax Commission of the State of Iowa, Appellee, vs. General Trading Company, a corporation, d/b/a Minneapolis Iron Store, Appellant, and that said judgment of the Supreme Court of Iowa be reversed, and that petitioner have such other and further relief as may be proper.

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STATE TAX COMMISSIONER OF THE STATE OF IOWA,

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

A.

The decision of the Supreme Court of Iowa is to be found in *State Tax Commission of Iowa vs. General Trading Company*, ... Iowa, ..., 10 N. W. (2) 659 (July 27, 1943). At the time of the preparation of this brief, it has not appeared in the official Iowa reports. It is to be found in the record (R. 24-34).

B.

The judgment by the Supreme Court of Iowa sought to be reviewed here was entered July 27, 1943.

C.

STATEMENT OF FACTS.

The facts are stated in the Petition for Certiorari, beginning on page 1.

D.

ASSIGNMENTS OF ERROR.

The Court below, the Supreme Court of Iowa, erred:

(1) In holding that the use tax law of Iowa, as applied to the facts here, did not violate the due process clause of the Fourteenth Amendment to the United States Constitution.

(2) In holding that the use tax law of the State of Iowa, as applied to the facts here, did not violate the commerce clause of the United States Constitution, to-wit: Article I, Section 8, Clause 3.

(3) In sustaining the Tax Commission in assessing a tax against petitioner under the Iowa use tax law as against the foregoing objections.

E.

SUMMARY OF ARGUMENT.

The Supreme Court of Michigan decided the Federal question indicated in the foregoing assignments of error directly contra to the decision of the Court below. This Court denied certiorari in the Michigan case. Because of these divergent conclusions on Federal questions, a writ of certiorari should be granted here. The use tax law of Iowa, as applied to the facts here, and the imposition of a tax against petitioner thereunder, violates both the Fourteenth Amendment and the commerce clause.

F.

ARGUMENT.

(a)

The Supreme Courts of Iowa and Michigan Have Arrived At Opposite Conclusions On the Same Federal Question.

The Supreme Court of Iowa deemed that this case was controlled by *Nelson vs. Sears, Roebuck & Company,* 312 U. S. 359, and *Nelson vs. Montgomery Ward & Company,* 312 U. S. 373. The Michigan Supreme Court held that these cases were not applicable, to a *similar Michigan Tax* imposed under identical circumstances.

Simpson vs. Grundy, 297 Mich. 403, 298 N. W. 81.

Nobody now disputes the right of the State to tax the user within the State on the use of property even though that

property comes from another State. *Henneford vs. Silas Mason Company*, 300 U. S. 577.

The right of a State to require a foreign corporation, *actually doing business within such State* (whether formally licensed to do business or not), to act as a collecting agent of the State for the purposes of the use tax is no longer open to question since the *Sears, Roebuck* case. This seems to be true whether or not the particular sales are brought about by the business done within the State. *Monamotor Oil Company vs. Johnson*, 292 U. S. 86; *Nelson vs. Sears, Roebuck & Company*, supra; *Nelson vs. Montgomery Ward & Company*, supra. *Felt & Tarrant Mfg. Co. vs. Gallagher*, 306 U. S. 62. In all these cases the corporation was *actually doing business in the state.*

But here we have a situation where (1) solicitors were sent into Iowa who solicited an order for the sales, but did not make them; (2) the orders were accepted and sales were actually made outside the State and the property delivered outside the State by delivery to a common carrier, the purchaser paying the freight; (3) petitioner was not doing business in Iowa, and was not licensed so to do.

Thus, any "taxable event" (*McGoldrick vs. Berwind-White Coal Mining Company*, 309 U. S. 33) in Iowa, so far as petitioner is concerned, is to be found in the fact that either (1) solicitors went into Iowa to conduct preliminary negotiations, or (2) petitioner delivered the property to a common carrier outside the State to be transported into the State at the expense of the purchaser.

Apparently the State does not claim that it could tax petitioner for sending solicitors into Iowa. In the Court below, it expressly disclaimed this idea. This will be dis-

cussed later. Nor does it apparently claim that it could tax petitioner for shipping the goods from outside the State into the State. This will likewise be further discussed.

What is apparently claimed is that a tax may be levied upon the use of the property in Iowa after it arrives at destination, and that because that tax is designated a use tax, the State can compel the petitioner who is not in Iowa to pay a tax upon the use some on else thereafter makes of the property in such State. The Supreme Court of Iowa so held. It is submitted that in so holding it erred.

Attention should be called to the divergent results reached by the Supreme Courts of Iowa and Michigan. Both cases involved identical facts, i. e., a solicitor or drummer conducting preliminary negotiations within the State, acceptance of the preliminary order outside the State, and a shipment thereafter into the State. Both cases were decided after the *Sears, Roebuck* and *Montgomery Ward* cases.

Yet, the Supreme Court of Michigan denounced the imposition of such a use tax as a violation of the Federal Constitution in *Simpson vs. Gundry*, 297 Mich. 403, 298 N. W. 81, while the Iowa Supreme Court below here upheld the tax as against identical objections. *State Tax Commission vs. General Trading Co.*, 10 N. W. (2) 659.

While the rules of this Court do not expressly recognize a difference of opinion on the same question between State Supreme Courts as being a ground for certiorari, yet where, as here, two State Supreme Courts have decided an important Federal question with opposite results, it is submitted that there is just as much reason for granting certiorari as when two Federal Courts of Appeal have differed.

This Court denied certiorari in the Michigan case in *Brown*

vs. Simpson, 314 U. S. 674.[4] While, of course, under the frequent pronouncements of this Court this denial of certiorari does not necessarily constitute an approval of the Michigan case, yet, unless this Court grants certiorari here, the result will be that in Michigan the imposition of such a use tax violates the Federal Constitution, but that it does not violate it in Iowa, and that the Supreme Courts of the other States having such use tax laws may follow either decision as they may see fit. Since it is the Federal Constitution which is being considered, this Court should settle the question for all time.

The decision in the case at bar is probably also opposed to that of the Supreme Court of Arkansas in *McLeod vs. J. E. Dilworth Company*, 171 S. W. (2d) 62 (not yet reported in the Official Arkansas Reports). There the Supreme Court of Arkansas held that a certain tax which was called a "gross receipts tax" was in fact not a use tax, but a retail sales tax, and that as such it violated the commerce clause. There the method of doing business was identical with that here. A traveling salesman who lived in Tennessee took tentative orders in Arkansas. These were accepted at the home office in Tennessee, and the goods were shipped by common carrier from Tennessee at the expense

[4]It may be claimed that the Michigan Supreme Court decided its case on both a Federal and a non-Federal ground, and that this was the reason for this Court denying certiorari. We doubt that this conclusion can be drawn from its opinion, but however that may be, it is clear that the Michigan Supreme Court did decide the case, in part at least, on a Federal ground, because it said:

> "In the case at bar *the State seeks to impose a burden on interstate commerce*, not in any manner connected with intrastate commerce, and *this may not be done*.
>
> * * * * *
>
> "So disassociated, *the business is strictly interstate commerce upon which the State may not impose the burden of the use tax* or compel plaintiff to collect the same." (298 N. W. 81 (83), 297 Mich. 403, (409).

In this respect, it reached a conclusion diametrically opposed to the conclusion of the Iowa Court below.

of the purchaser. The seller was not doing business in Arkansas. The Supreme Court of Arkansas said:

> "To conclude, we hold herein:
>
> "(1) that the tax involved is a sales tax, and (2) that as a sales tax *it would be a burden on interstate commerce* for the tax to be imposed and collected under the facts in these cases."

It is, we think, clear that the Iowa Supreme Court misinterpreted the *Sears, Roebuck* and *Montgomery Ward* cases, and misunderstood the basic reasons behind them. The real reason for these decisions is as follows:

The defendants were foreign corporations admitted to do business in the State of Iowa, and maintained in Iowa retail stores. As a price to be paid for the privilege of doing business in Iowa, the burden of collecting the use tax could be imposed. This is demonstrated by the language of the Court in the *Sears, Roebuck* case as follows:

> "Since Iowa has extended to it that privilege (doing business in the state), Iowa can exact this burden (i. e., compel it to act as the collecting agent of the state) as a price of enjoying the full benefits flowing from its Iowa business." (364)

The same rule probably applies where the corporation is *actually doing business* without being formally licensed. *Monamotor Oil Company vs. Johnson*, supra. *Felt and Tarrant Mfg. Co. vs. Gallagher*, supra. But where, as here, a corporation is neither licensed to do business in a State nor, in fact, doing any business therein except the solicitation of orders in interstate commerce, the State cannot levy such a tax due to "impotence of state power." It

may be claimed as the Iowa Supreme Court intimated (R. 29-30), that this Court used the term "impotence" as meaning impotence of State power to collect the tax, and not impotence to levy the tax, but a further reading of the opinion clearly discloses that this Court did not use the words "impotence of state power" in that sense. This Court said:

> "It points to the fact that in its mail order business it is in competition with out-of-state mail order houses *which need not and do not collect the tax on their Iowa sales.* But those other concerns *are not doing business in the state as foreign corporations. Hence, unlike respondent, they are not receiving benefits from Iowa for which it has the power to exact a price*" (365).

As we read the *Sears, Roebuck* and the *Montgomery Ward* decisions, this Court in no way disapproved of the propositions of law laid down in Mr. Justice Roberts' dissenting opinion. This Court merely held those propositions were inapplicable to the case for the sole and only reason that there the foreign corporations had been licensed to transact business in Iowa, and were in fact transacting business, and, hence, were liable for the tax.[5]

[5]The cases of *Wisconsin vs. J. C. Penny Company*, 311 U. S. 435, and *State Tax Commission of Utah vs. Aldrich*, 316 U. S. 174, while differing somewhat from the case at bar, on the facts, were decided on this same theory.

In the *J. C. Penny* Case this court said:

> "The simple but controlling question is whether the state has given anything for which it can ask return. *The substantial privilege of carrying on business in Wisconsin*, which has here been given, *clearly supports the tax*, and the state has not given the less merely because it has conditioned the demand of the exaction upon happenings outside its own borders." (443)

In the *Utah Tax Commission* case, the court said:

> "Suffice it to say that if that freedom of transfer exists as respondents claim, it stems from Utah law. It finds its ultimate source in the authority which Utah has granted. *It is indeed a benefit which Utah has bestowed. For it alone Utah may constitutionally ask a return.*" (180)

If this is not what the *Sears, Roebuck* and *Montgomery Ward* decisions mean, then since these cases involved shipments by mail into Iowa, they must mean that anyone in the United States from Maine to California (even though he has never been in, or had any representative, solicitor, or drummer within the State of Iowa), who sends by mail or otherwise into Iowa any tangible property which the purchaser intends to use therein, must pay to the State of Iowa the use tax thereon. We do not believe that this Court intended to commit itself to any such doctrine or theory. And, yet, the only difference between the case at bar and the supposed case lies in the fact that here drummers entered the State of Iowa, who took tentative orders, but did not accept them. As presently to be pointed out, however, the right to send these drummers into the State did not arise under or by reason of any Iowa law, but was a right which petitioner possessed under the Federal Constitution, which Iowa had no right to control.

(b)

This Tax Violates the Fourteenth Amendment.

While the Iowa law in terms applies to all sales "whether within or without the State" (Sec. 8), unless, as previously pointed out, a foreign corporation is licensed to do business in a State (or is actually doing business there without a license), the State cannot tax any of its transactions or properties beyond the borders of the State. Such a tax violates the due process clause.

Frick vs. Pennsylvania, 268 U. S. 473.

Connecticut General Life Insurance Company vs. Johnson, 303 U. S. 77.

Rhode Island Hospital Trust Company vs. Doughton, 270 U. S. 69.

The converse apparently deducible from the *Sears, Roebuck, Montgomery Ward* and *J. C. Penny Co.* cases is that where a foreign corporation is *licensed by the State to transact business therein or is actually transacting business*, the State may, as a condition to permitting it to so transact business, even require the corporation to pay taxes on transactions beyond the State's jurisdiction.

The fact that petitioner sent solicitors into the State without authority to consummate contracts, but merely to solicit tentative orders, does not constitute doing business within the State.

Green vs. C. B. & Q. Ry. Co., 205 U. S. 530.

People's Tobacco Company vs. American Tobacco Company, 246 U. S. 79 (87).

Philadelphia & Reading Railway Company vs. McKibbin, 243 U. S. 264 (268).

There is no question but that these sales were consummated in Minnesota, where the orders were accepted and where delivery was made to a common carrier. *United States vs. Andrews & Co.*, 207 U. S. 229; *D. L. & W. Ry. Co. vs. U. S.*, 231 U. S. 363 (371). Neither of these constitutes a "taxable event" in Iowa, and, hence, since petitioner was not transacting business in Iowa, this tax violates the due process clause. *Connecticut General Life Insurance Co. vs. Johnson*, supra.

(c)

The Tax Violates the Commerce Clause.

Solicitation of the sale of goods for an interstate commerce sale is a part of interstate commerce.

Robbins vs. Shelby County Taxing District, 120 U. S. 489.

Caldwell vs. North Carolina, 187 U. S. 622.

Gwin, White & Prince, Inc. vs. Henneford, 305 U. S. 434 (437).

Such solicitation of goods for an interstate commerce sale cannot be taxed by the State. *Robbins vs. Shelby County Taxing District*, supra.[6] There, this Court denounced a license or privilege tax on traveling salesmen or drummers not having a regular licensed house of business within the taxing district. The Court there said:

> "*Interstate commerce cannot be taxed at all*, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the state." (497)

[6]The cases following the Robbins case are to be found in a note on page 56 to *McGoldrick vs. Berwind-White Coal Mining Company*, 309 U. S. 33. Since, however, Iowa has not attempted to tax this activity, but taxes only the use by someone else of goods, sold through this activity, it is unnecessary to consider the suggestion in that note that all of these cases could have been decided on the theory that the tax was an instrument of discrimination against interstate commerce. See, also, *Best & Company vs. Maxwell*, 311 U. S. 454, which was expressly decided on the theory that there was in fact an actual discrimination against interstate commerce.

Nor is it important to consider the effect of the statement of this Court in the *Berwin-White* case (309 U. S. 33 (57)), that the *rule* in the Robbins case "has been narrowly limited to fixed-sum license taxes imposed on the business of soliciting orders," since, as indicated, Iowa has not by this law attempted to tax such solicitation evidently on the theory that it could not do so.

In *Adams Manufacturing Company vs. Storen*, 304 U. S. 307, 312, this Court said:

> "The opinion of the State Supreme Court stresses the generality and nondiscriminatory character of the exaction, but it is settled that *this will not save the tax if it directly burdens interstate commerce.*"

To sustain this tax against petitioner on the theory that its solicitors or drummers entered the State of Iowa without making any binding contracts is clearly to tax an interstate activity, the right to engage in which is granted to petitioner under the Federal Constitution, and is in no sense dependent upon any law of the State of Iowa.

Gibbons vs. Ogden, 9 Wheat. 1.

Alpha Portland Cement Co. vs. Massachusetts, 268 U. S. 203.

In the *Berwind-White* case (309 U. S. 33 (57)), this Court said:

> "It is true that a state tax upon the operations of interstate commerce measured *either by its volume or the gross receipts derived from it* has been held to infringe the commerce clause * * *."

The validity of this tax must, therefore, rest upon the fact that petitioner shipped these goods from Minnesota into Iowa.

This is likewise an activity granted under the Federal Constitution, and in no way dependent upon Iowa law. It, hence, cannot be taxed by Iowa, since it is clearly interstate commerce.

Ozark Pipe Line Corporation vs. Monier, 266 U. S. 555.

Heyman vs. Hayes, 236 U. S. 178.

In *Gwin, White & Prince, Inc., vs. Henneford,* supra, this Court denounced a Washington tax laid on the business of marketing fruit shipped out of Washington, including the solicitation of sales (437).

For other cases striking down laws purporting to tax interstate commerce, see:

International Text Book Co. vs. Pigg, 217 U. S. 91.

Fisher's Blend Station vs. State Tax Commission, 297 U. S. 650.

Puget Sound Stevedoring Co. vs. State Tax Commission, 302 U. S. 90.

(d)

CONCLUSION.

In the last analysis, therefore, this case boils down to this: Can Iowa levy a use tax *against petitioner,* who is not doing business in Iowa, for the use someone else makes of the properties in Iowa after they are delivered by petitioner to the purchaser in Minnesota, and later used by him in Iowa? It is submitted that Iowa cannot do this, and a writ of certiorari to its Supreme Court should be granted.

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APPENDIX.

(Iowa Use Tax Law)

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. (Sec. 6943.102 Code 1939.) The following words, terms and phrases when used in this act shall have the meanings ascribed to them in this section:

1. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (1) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, (2) fuel which is consumed in creating power, heat or steam for processing or for generating electric current, (3) industrial materials and equipment, which are not readily obtainable in Iowa, and which are directly used in the actual fabricating, compounding, manufacturing or servicing of tangible personal property intended to be sold ultimately at retail.

(Paragraphs 2, 3, and 4, Sec. 1, omitted.)

5. "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this act; provided, however, that when in the opinion of the commission it is necessary for the efficient administration of this act to regard any sales

men, representatives, truckers, peddlers or canvassers, as the agents of the dealers, distributors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the commission may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this act.

6. "Retailer maintaining a place of business in this state" or any like term, shall mean and include any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to chapter three hundred eighty-six (386), code, 1939.

(Paragraphs 7, 8, 9, Section 1, omitted.)

Sec. 2. (Code Sec. 6943.103.) An excise tax is hereby imposed on the use in this state of tangible personal property purchased on or after the effective date of this act (April 16, 1937) for use in this state, at the rate of two per cent of the purchase price of such property. Said tax is hereby imposed upon every person using such property within this state until such tax has been paid directly to the county treasurer, to a retailer, or to the commission as hereinafter provided.

(Sec. 3, omitted.)

(Sec. 4, omitted.)

Sec. 5. (Code Sec. 6943.106.) The tax herein imposed shall be collected in the following manner:

(Par. 1, Sec. 5, omitted.)

2. The tax upon the use of all tangible personal property other than that enumerated in subsection one hereof, which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the tax commission shall authorize pursuant to section nine, (Code Sec. 6943.110) shall be collected by such retailer and remitted to the state tax commission, pursuant to the provisions of sections eight to twelve inclusive. (Code Secs. 6943.109 to 6943.113 inclusive.)

3. The tax upon the use of all tangible personal property not paid pursuant to subsections one and two hereof shall be paid to the commission directly by any person using such property within this state, pursuant to the provisions of section thirteen hereof. (Code Sec. 6943.114.)

(Secs. 6 and 7, omitted.)

Sec. 8. (Code Sec. 6943.109.) Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under the provisions of section three hereof nor collectible under the provisions of section six hereof, shall at the time of making such sales, whether within or without the state, collect the tax imposed by this act from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the commission, if the commission shall, by regulation, require such receipt. Each such retailer shall list with the commission the name and

address of all his agents operating in this state, and the location of any and all his distribution or sales houses or offices or other places of business in this state.

(Sec. 9, omitted.)

(Sec. 10, omitted.)

Sec. 11. (Code Sec. 6943.112.) The tax herein required to be collected by any retailer pursuant to sections eight (Code Sec. 6943.109) or nine (Code Sec. 6943.110) hereof, and any tax collected by any retailer pursuant to said sections, shall constitute a debt owed by the retailer to this state.

(Secs. 12, 13, 14, 15, 16, 17, 18, 19 and 20, omitted.)

Sec. 21. (Code Sec. 6943.122.) Whenever any retailer maintaining a place of business in this state, or authorized to collect the tax herein imposed pursuant to section nine (Code Sec. 6943.110) hereof, fails to comply with any of the provisions of this act or any orders, rules, or regulations of the commission prescribed and adopted under this act, the commission may, upon notice and hearing as hereinafter provided, by order revoke the permit, if any, issued to such retailer under section eleven (11) of Senate File 316, acts of the Forty-seventh General Assembly (Code Sec. 6943.084), or if such retailer is a corporation authorized to do business in this state under chapter three hundred eighty-six (386), code, 1939, may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders, rules or regulations. The secretary of state shall, upon receipt of such certified copy, revoke the permit authorizing said corporation to do business in this state, and shall issue a new permit only when such corporation shall have obtained from

the commission an order finding that such corporation has complied with its obligations under this act. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such order should not be made, and he shall be given ten days' notice of the time, place, and purpose of such hearing. The commission shall have the power in its discretion to issue a new permit pursuant to section eleven of Senate File 316, acts of the Forty-seventh General Assembly (Code Sec. 6943.084), after such revocation.

(Secs. 22, 23, 24, and 25, omitted.)

Sec. 26. (Code Sec. 6943.125.) If any article of tangible personal property has already been subjected to a tax by any other state in respect to its sale or use in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed. If such tax imposed in such other state is two per cent (2%) or more, then no tax shall be due on such articles.